

*Mr. Goddard*



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Gracon Corp.

**File:** B-236603

**Date:** December 26, 1989

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### DIGEST

1. Even though the protester received a higher point score under solicitation evaluation formula incorporating cost and technical factors, the contracting officer reasonably selected a significantly lower-priced offeror for award, where both offerors proposed substantially the same technical approach and the protester's high price was caused by its substantial overstatement of one element of cost in its fixed price, a matter that was brought to its attention during discussions, such that the agency could not find the protester's price was reasonable.

2. Agency properly conducted more extensive technical discussions with an offeror who submitted incomplete proposal than with the protester who submitted substantially complete proposal with no notable deficiencies.

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### DECISION

Gracon Corp. protests the award of a contract to Welch Equipment Co., Inc., under request for proposals (RFP) No. USM88-44, issued by the United States Mint, Department of the Treasury, for a fixed-price contract for the construction and installation of an automated materials handling system for the Denver Mint. Gracon contends that the Mint failed to follow the solicitation's evaluation formula under which Gracon should have received the award. Gracon also alleges that Welch was given an opportunity to revise its technical proposal while Gracon was not offered this opportunity.

We deny the protest.

The solicitation provided that each acceptable proposal would be assigned a point value in each of two categories, price and technical, with 25 total possible price points and 75 total possible technical points. The solicitation provided formulae to assign precise points for the technical

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and cost factors. The technical evaluation factors, listed in relative order of importance, were: (1) Specialized experience; (2) Personnel qualifications; (3) Experience and subcontractors; (4) Project control; and (5) Volume of work (i.e. total annual dollar volume of work for the past 5 years). The solicitation finally provided that "the government will evaluate proposals in accordance with the requirements specified herein" and "award would be made to the contractor whose offer is most advantageous to the Government, cost and technical factors considered."

Only Gracon and Welch submitted proposals. Both proposals were regarded as acceptable, although Gracon received a higher technical score. Gracon also proposed the lowest initial price.

Repeated and extensive cost discussions were held with each offeror and revisions made to the technical requirements because both offerors' prices exceeded the government's budget for this procurement. Also, technical discussions were conducted with Welch, since its initial proposal contained few details.

The technical evaluators found Gracon superior to Welch in each of the technical evaluation factors. That is, Gracon had more extensive specialized experience, particularly in the material handling system area, and very qualified personnel, whereas Welch had less experience and less experienced personnel. Additionally, while Gracon proposed a well documented project control plan to show how it would successfully perform the contract, Welch's project control was not well defined. Consequently, Gracon received 75 technical points and Welch 61.3 points.

Welch submitted the low priced best and final offer (BAFO) of \$2,627,748.80 and received 25 points for the price factor. Gracon's BAFO price was \$3,019,500 and it received 22 points under the RFP formula, with the result that Gracon's total score was 97 points while Welch's score was 86 points.

Welch was selected for award because its proposal was considered technically as acceptable as Gracon's proposal, and since it offered a significantly lower fixed price. Award was made August 2, 1989. Since this protest was filed more than 10 calendar days later, performance of this contract has not been suspended by the agency.

Gracon argues that the Mint's selection basis is in violation of the statutory requirement that competitive proposals be evaluated based solely on the factors specified

in the solicitation. Competition in Contracting Act, 41 U.S.C. § 253b(a) (Supp. IV 1986). Gracon alleges that the Mint impermissibly changed the criteria for award so that price was given a predominant weight instead of the 25 percent weight specified in the solicitation.

It is true that Gracon received a higher technical score and thus a higher overall score under the RFP evaluation formula, which incorporated cost and technical factors, notwithstanding Welch's low price. However, the source selection official retains the discretion to determine whether such a point differential between offers represents any actual significant difference in technical merit. Harrison Sys., Ltd., 63 Comp. Gen. 379 (1984), 84-1 CPD ¶ 572. Here, the record shows that both offerors proposed substantially similar technical approaches to accomplishing this construction project because the same person designed their proposed systems. Indeed, the contracting officer found that the approaches and resources of both offerors were adequate to meet the Mint's needs.

However, Welch's price was almost \$400,000 less than Gracon's price. From the extensive discussions extending from December 1988 to August 1989 that cover each cost element of the fixed priced proposals and the repeated amendments to the scope of work to delete work items, it was apparent that the Mint was very concerned about cost, and it should have been obvious to the offerors that the Mint would only make award for the construction and installation of the system at a reasonable price. Indeed, in its protest, Gracon admitted that it had been made aware of the Mint's overriding cost concerns prior to the submission of its BAFO.

The record shows that virtually the entire amount of the \$391,752 difference between Welch's and Gracon's prices was in the number of manhours for the electrical work. That is, Welch proposed 5,100 manhours for this work, while Gracon proposed 8,100 manhours. The government estimate for this work was 4,700 manhours. The Mint has calculated that the additional 3,000 manhours appeared to add \$381,000 to Gracon's price.

The contracting officer states that the Mint brought this specific problem to Gracon's attention on June 6, in an effort to have Gracon reduce its proposed costs for electrical portion of the work. However, Gracon's BAFO price did not reflect a price reduction responsive to this concern. Gracon has not responded to the contracting officer's account of this problem.

After noting the continuing problem in Gracon's BAFO, the Mint specifically concluded that the almost \$400,000 premium for Gracon's higher rated proposal could not be justified, given Gracon's apparent overstated costs for the electrical portion of the work. Inasmuch as both offerors' technical approaches were very similar and the price difference was caused by Gracon's failure to propose a reasonable price for the electrical work, we think the contracting officer could properly reject Gracon's proposal because of the unreasonable pricing, even though it was scored higher than Welch. Under these Circumstances, we find the agency reasonably, consistent with the RFP evaluation scheme, found Welch's proposal was most advantageous to the government.

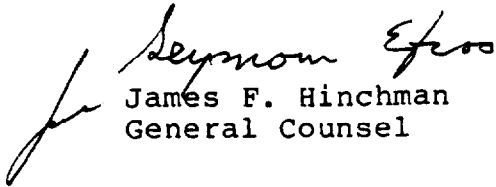
Gracon also contends that improper discussions were conducted with Welch to allow it to improve its proposal without allowing Gracon the same opportunity. Gracon alleges that these discussions constituted prohibited technical leveling.

The record confirms that more extensive technical discussions were conducted with Welch than with Gracon, although some technical questions were asked of Gracon. However, the record also shows that while Gracon's initial proposal was substantially complete with no notable deficiencies, Welch's proposal lacked documentation in almost all the evaluation criteria. Under the circumstances, it was entirely appropriate for the Mint to bring Welch's deficiencies to its attention, while not conducting extensive discussions with Gracon. See Weinschel Eng'g Co., Inc., 64 Comp. Gen. 524 (1985), 85-1 CPD ¶ 574 (agency may properly conduct extensive discussions with offerors whose initial proposals contain technical deficiencies while conducting more limited discussions with offerors whose proposal contain fewer weaknesses or deficiencies).

Moreover, from our review we do not believe the Mint violated the prohibition against technical leveling since there is no evidence that successive rounds of technical discussions were held with Welch to bring its proposal up to the level of Gracon. See Federal Acquisition Regulation § 15.610(d)(1) (FAC 84-16). In this regard, it appears only one set of technical questions were put to Welch, not successive rounds. See Unidyne Corp., B-232124, Oct. 20, 1988, 88-2 CPD ¶ 378. Moreover, even after discussions were

conducted Gracon maintained a 14 point advantage under the evaluation criteria. Therefore, we find the agency did not conduct improper discussions.

The protest is denied.

James F. Hinchman  
General Counsel